

**AMENDED**

# ARIZONA STATE SENATE

## RESEARCH STAFF



TO: MEMBERS OF THE SENATE

DATE: February 17, 2012

SUBJECT: Strike everything amendment to S.B. 1505, relating to cities and towns; rulemaking

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Purpose

Establishes an administrative rule making process for cities and towns.

Background

Pursuant to statute, “rule” is defined as an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency (A.R.S. 41-1001). The Arizona Administrative Code (Code) is where the official rules of the state of Arizona are published. The Code is published by the Secretary of State and is the official compilation of rules that govern state agencies, boards, and commissions. The 10-volume set includes rules divided into 20 Titles and 230 Chapters.

The Governor's Regulatory Review Council (GRRC) was created by Executive Order in May 1981. Composed of seven members, the Council is chaired by the Director of the Department of Administration or designee, who serves ex-officio, GRRC reviews most rules to ensure that they are necessary and to avoid duplication and adverse impact on the public. GRRC assesses whether a rule is clear, concise, and understandable, legal, consistent with legislative intent and within the agency's statutory authority, and whether the benefits of a rule outweigh the cost. If a rule does not meet these criteria, GRRC returns it to the agency for further consideration.

According to GRRC the steps for rulemaking are as follows:

**STATE AGENCY:**

- Opens a docket and files notice with the Secretary of State in the Arizona Administrative Register.
- Drafts proposed rules.
- Files proposed rules and notice with the Secretary of State in the Arizona Administrative Register.
- Receives written and oral comments from the public.
- Holds oral proceeding.
- Reviews public comments and makes necessary changes to the proposed rules.
- Submits rules to the Governor's Regulatory Review Council for approval.
- Appears before the Council to answer questions regarding the rules.

**GRRC STAFF:**

- Reviews rules for compliance with statutory criteria.
- Works with agency personnel to make changes and corrections to rules.
- Prepares a memorandum for Council regarding whether the rules comply with statutory criteria and recommending that the rules be approved, in whole or in part, with or without changes, or be returned to the agency, in whole or in part.
- Submits approved rule packages to the Secretary of State for publication in the Arizona Administrative Register and the Arizona Administrative Code.

**GRRC:**

- Reviews rule packages.
- Considers staff comments.
- Receives public testimony at the Council meeting.
- Decides whether the rules should be approved, in whole or in part, with or without changes, or be returned to the agency, in whole or in part, or tabled until a later meeting.

There is no anticipated fiscal impact to the state General Fund associated with this legislation. Any fiscal impact to cities and towns is also undetermined at this time.

Provisions

1. Applies the rule making process to cities and towns.
2. Requires a municipality to file substantive policy statements and specifies elements that the substantive policy statement must include.
3. Requires a municipality to publish an annual directory summarizing the subject matter of all currently applicable rules and substantive policy statements.
4. Requires a municipality to publish and distribute the municipality's code and register.
5. Contains requirements for a municipality's code and requires the code to contain the full text of each final rule filed with the municipality and each rule adopted that is statutorily exempt from the rule making process.
6. Allows a municipality to charge a fee not to exceed all costs of production for a subscription of single copy of the code.
7. Requires a municipality to publish or update a web based register at least once each month and specifies elements that must be included in the register.
8. Requires each municipality to establish and maintain a current, public rule making docket for each pending rule making proceeding.
9. Specifies required elements for inclusion on the docket.

10. Stipulates that a rule making proceeding is pending from the time that the municipality begins to consider proposing the rule until closed by a specified event.
11. Requires a municipality to file a notice of a proposed action before rule making, amendment or repeal and requires the notice to contain specific elements.
12. Requires a municipality to notify by first class mail, fax, electronic mail or periodic newsletter each person who has requested notification of proposed rule making.
13. Requires a municipality to afford people the opportunity to submit statements, arguments, data and views on a proposed rule for at least 30 days after publication of notice.
14. Allows a municipality to adopt rules for the conduct of oral rule making proceedings.
15. Requires a municipality to submit a rule package to the governing body and specifies elements that must be included in the rule package.
16. Allows a municipality to conduct emergency rule making and exempts emergency rules from public notice requirements.
17. Stipulates that an emergency rule must first be approved by a municipal attorney.
18. Prohibits emergency rule making if the emergency situation was created due to a municipality's delay or inaction.
19. Allows expedited rule making if the rule making does not increase the cost of regulatory compliance or reduce procedural rights of persons regulated and conforms to other prescribed criteria.
20. Includes provisions for petitions, declaratory judgments and exemptions.

#### ***Miscellaneous***

21. Allows a person to review the full text or summary of all rule making activity, the summary of substantive policy statements and the full text of executive orders in the register.
22. Allows a person to participate in the rule making process including providing written or oral comments on proposed rules to a municipality.
23. Allows a person to allege that an existing municipal practice or substantive policy statement constitutes a rule and have that municipal practice or substantive policy statement declared void.
24. Allows a municipality to reduce a new or amended rule's impact on small business by using a prescribed method.
25. Requires a municipality that proposes a new rule or amendment to an existing rule that may have an

impact on small business to consider the following methods for reducing the impact on small business:

- a) establish less stringent compliance or reporting requirements in the rule for small business
- b) establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small business; or
- c) consolidate or simplify the rule's compliance or reporting requirements for small business.

26. Defines terms.

27. Contains technical and conforming changes.

28. Becomes effective on the January 1, 2013.

Amendments Adopted by Committee

- 1. Adopted the strike everything amendment.
- 2. Added remedies for small business affected by new rules.

Senate Action

GR              2/15/12      DPA/SE      6-1-1-0

BB/ly